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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,358

04/11/2006

Bernd Hansen

51063

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1609 7590 06/24/2009

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EXAMINER

HUSON, MONICA ANNE

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

06/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,358	Applicant(s) HANSEN, BERND	
	Examiner MONICA A. HUSON	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4, 5, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 2 recites the broad recitation "different plastic materials", and the claim also recites "especially from polyolefin, polyamide, polypropylene, low density polyethylene, copolymers, and ethylene vinyl alcohol copolymers" which is the narrower statement of the range/limitation. Likewise, in the present instance, claim 4 recites the broad recitation "at least two layers", and the claim also recites "especially more than three, preferably five or more barrier layers" which is the narrower statement of the range/limitation.

Regarding claim 5, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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Claim 6 recites the limitation "the other device" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Gokcen et al. (U.S. Patent 4,510,115). Regarding Claim 1, Gokcen et al., hereafter "Gokcen," show that it is known to carry out a method for producing at least one container of a plastic material filled with a medium (Abstract) in which the plastic is extruded in a tubular shape and is placed against the inside walls of a molding tool for molding the respective container by means of a differential pressure, the respective container is filled with the medium by way of its fill opening with a filling means, and the fill opening of the container is closed by sealing (Figures 1-4) characterized in that for extrusion of different plastic materials a coextrusion process is used in which the respective container is built up at least partially from several layers of plastic material and that at least one of the layers is used as a barrier layer (Figure 16, element 146).

Regarding Claim 4, Gokcen shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein two layers are used for a container (Figure 16-19).

Regarding Claim 6, Gokcen shows that it is known to have a device for producing a container wherein the device component has at least one extrusion head and for each provided layer an extruder and wherein the other device has at least one mold-fill-seal means (Figures 2-4; Figure 16, element 148, 146, 144).

Regarding Claim 7, Gokcen shows the apparatus as claimed as discussed in the rejection of Claim 6 above, including an apparatus wherein the extrusion head enables nozzle coextrusion (Figure 16, element 148, 146, 144)

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gokcen, in view of Becker et al. (U.S. Patent 4,838,778). Gokcen shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show the specific materials. Becker et al., hereafter "Becker," show that it is known to carry out a method wherein the individual layers of the product are polypropylene and ethylene vinyl alcohol copolymers (Column 1, lines 54-58). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Becker's material selection during Gokcen's molding process to accommodate varying end-product specifications.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gokcen, in view of Snow (U.S. Patent 3,775,239). Gokcen shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show using an ionomer adhesive layer. Snow shows that it is known to carry out a method of making a container, wherein ionomer adhesive layers are used between the layers of other materials (Figure 1, element 11; Column 2, lines 6-17). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Snow's ionomer adhesive layer in order to take advantage of its outstanding toughness and transparency.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA A. HUSON whose telephone number is

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(571)272-1198. The examiner can normally be reached on Monday-Friday 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Monica A Huson
Primary Examiner
Art Unit 1791

/Monica A Huson/

Primary Examiner, Art Unit 1791